Supreme Court, U.S.
FILED
MAY 5 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1827

In the Supreme Court of the United States

OCTOBER TERM, 1985

GUY GRIDER,
Petitioner,

vs.

TEXAS OIL & GAS CORP. and
TXO PRODUCTION CORP.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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May, 1986

QUESTION PRESENTED

1. Whether denying a litigant the opportunity to visit his own land to conduct pretrial discovery constitutes a denial of that litigant's constitutional right to due process of law?

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TEXAS OIL & GAS CORP. and
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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

OPINION BELOW

The order of the Supreme Court of the State of Oklahoma was issued on September 16, 1985. It was not reported, but is attached in the Appendix hereto. The order of the Supreme Court of the State of Oklahoma that denied rehearing by a split court 5-3 vote was issued on February 5, 1986. It was not reported, but is also attached in the Appendix hereto.

JURISDICTION

Jurisdiction of this Court is invoked under the legal authority of 28 U.S.C. §2101(c).

CONSTITUTIONAL PROVISIONS INVOLVED

Article VI, cl.2 of the Constitution of the United States provides in pertinent part:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the Supreme Law of the Land. . . ."

Amendment 14 of the Constitution of the United States provides in pertinent part:

> "Nor shall any state deprive any person of life, liberty or property without due process of law."

INTRODUCTION

Guy Grider, an individual investor in oil and gas wells in Oklahoma operated by the Respondents, Texas Oil and Gas Corp. and TXO Production Corp., petitions this Court for a writ of certiorari to review the holding of the Supreme Court of Oklahoma that held in effect that a litigant who owns a portion of certain oil and gas leases cannot visit his own land whenever he chooses, at his own risk, as granted by the Operating Agreement signed by the parties, in order to gather evidence for use in the litigation.

STATEMENT

Beginning in February, 1982, Guy Grider purchased a working interest in several oil and gas wells in Oklahoma drilled and operated by Ratliff Exploration Company and by Texas Oil and Gas Corp. and TXO Production Corp. Mr. Grider paid over $1,000,000.00 for his working interest and subsequent proportionate billing for drilling, comple-

tion and operating costs. Grider requested and received a key to *all* of the aforesaid oil and gas leases. Grider used the key to gain access to the land and to view oil and gas operations conducted thereon.

Grider and all other working interest owners signed a Model Form Operating Agreement, AAPL Form No. 610-1977. Article VI, §D, Access to Control Area and Information provides in pertinent part:

> "Each party shall have access to the Contract Area at all reasonable times, at its sole risk to inspect or observe operations, and shall have access at reasonable times to information pertaining to the development or operation thereof, including operator's books and records relating thereto."

No evidence has been introduced or even alleged that Mr. Grider ever interfered with the operations by Ratliff or any of Ratliff's agents, employees or third party service companies or that any sabotage or unexplained losses occurred during the time Grider and other working interest owners had keys to the property.

None of the individual wells in question are located on any secured areas around Will Rogers International Airport in southwest Oklahoma City. Neither Mr. Grider nor anyone else visiting the wells poses any threat to airport operation.

In the spring of 1983, Mr. Grider questioned some of the Ratliff activities and some of the Ratliff entries on joint billing statements sent to him. Therefore, Ratliff changed the locks on the gates to all 17 properties. Attached in the Appendix hereto is a copy of Mr. Grider's letter dated

September 28, 1983, to Ratliff Exploration Company requesting that he be given a key to the premises after the locks changed.

In December, 1984, TXO purchased from Ratliff the aforesaid lands and began operating same.

Since assuming operations of the aforesaid oil and gas leases, TXO has refused to grant Mr. Grider a key. Such refusal is made despite the plain language of the Operating Agreement set forth above. Although TXO uses multiple locks interlocked to form a chain on each gate, only *one* key is needed to fit one lock and give access to all of the leases.

On February 22, 1985, Grider filed a Petition in the District Court of Oklahoma County in Case No. CJ-85-1689. The Plaintiff's Petition set forth two separately numbered causes of action. It alleged fraudulent billing practices on the part of Ratliff and TXO and underpayment of proceeds of hydrocarbon production by Ratliff and TXO on the 17 oil and gas wells located in Oklahoma.

As a part of the prosecution of that action, Grider filed on July 10, 1985, his Motion for Entry Upon Land for Inspection and three other motions. By agreement counsel for the parties conferred and reached agreement on the other three motions. That announcement was made to the court when the parties appeared for oral argument on August 8, 1985. No agreement was reached on Grider's Motion for Entry Upon Land for Inspection. That motion was argued on August 9, 1985, and sustained by Judge Blevins.

As noted above, upon the application of Texas Oil and Gas Corp. and TXO Production Corp., the Oklahoma Su-

preme Court assumed original jurisdiction and overruled the decision of the District Court of Oklahoma County.

Respondent Guy Grider immediately filed a Motion for Rehearing as allowed by Oklahoma Supreme Court rules. In the Respondent's Motion for Rehearing, the constitutional issue of violation of Guy Grider's right to due process of law was specifically raised. Guy Grider argued with full citations of authority both that the Oklahoma Supreme Court decision deprived him of his ability to protect his property by lawful pretrial discovery and secondly, that the decision of the Oklahoma Supreme Court deprived Grider of property without due process of law.

These bedrock, constitutional arguments went unheeded by a divided majority of the Oklahoma Supreme Court. The Oklahoma Supreme Court order dated February 5, 1986, merely shows

"Rehearing denied.

CONCUR: Doolin, V.C.J., Hodges, Lavender, Kauger, Summers, JJ.

DISSENT: Hargrave, Opala, Wilson, JJ."

REASONS FOR GRANTING THE WRIT

The decision of the Oklahoma Supreme Court to reverse the lower court decision on pretrial discovery and its subsequent 5-3 decision to deny a rehearing totally disregard the plain language and fundamental tenets of portions of the Constitution of the United States. These decisions choke off normal and necessary pretrial discovery by a party visiting *his own land* thereby rendering utterly meaningless the judicial process and the liberty of a person to fully protect his property by due process of law.

Such absolute abridgement of constitutional rights cannot stand.

1. Certiorari Should Be Granted Because the Decision Below Conflicts With Decisions of This Court on the Issue of Due Process of Law.

The two decisions of the Oklahoma Supreme Court in this litigation clearly deny Guy Grider the ability to visit *his own land* in an effort to gather evidence on pending litigation. The effect of these decisions below is to violate Guy Grider's constitutional right to due process of law which includes Guy Grider's right to present every aspect of his case in court. The decision of the Oklahoma Supreme court renders meaningless any subsequent trial because Guy Grider cannot discover or present all relevant evidence.

This High Court has regularly held that procedural due process requires an opportunity to be heard in a "meaningful manner," to-wit:

> "Procedural due process includes the right to notice and opportunity to be heard at a meaningful time

> *and in a meaningful manner.*" *Fuentes* v. *Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972), rehearing denied, 409 U.S. 902, 93 S.Ct. 177, 34 L.Ed.2d 165 (1972). (Emphasis added)

> "What the constitution does require is 'an opportunity [to be fully heard] granted at a meaningful time and in a meaningful manner.' *Armstrong* v. *Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965) . . . 'for a hearing appropriate to the nature of the case' *Mullane* v. *Central Hanover Bank and Trust Co.*, supra, U.S. at 313, 70 S.Ct. and 657' ". *Boddie* v. *Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971).

> "Fundamental requirement of due process is the opportunity to be heard; it is an opportunity which must be granted in a meaningful time and in a meaningful manner," *Armstrong* v. *Manzo*, 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965).

And this High Court has specifically held previously that being heard "in a meaningful manner" under the constitutional guarantee of due process of law requires "that there be an opportunity to present every available defense," *Landsey* v. *Normet*, 405 U.S. 56, 92 S.Ct. 862, 31 L.Ed.2d 36 (1972), and to file all appropriate motions and pleadings essential to present claims and raise relevant issues, *Holt* v. *Commonwealth of Virginia*, 381 U.S. 131, 85 S.Ct. 1375, 14 L.Ed.2d 270 (1965).

In the case at bar, any kind of hearing or trial that occurs when Guy Grider is prevented from presenting all possible evidence of what occurred on his own property is utterly meaningless. It renders the bedrock constitutional guarantee of due process of law into a hollow promise.

Under American jurisprudence of over 200 years, the trial of a lawsuit climaxes a period of pretrial discovery and pits two adversaries armed with all relevant facts concerning the constroversy at bar. Pretrial discovery in the federal court system and in nearly every state is to be broadly read and interpreted to assist the trier of fact in its mission at trial. And the only guarantee of this full and fair trial is the due process clause of the United States Constitution. This constitutional guarantee must not degenerate into a "hollow promise" as previously noted by this Court, to-wit:

> "In citing the due process clause of the 14th Amendment of the United States Constitution, the United States Supreme Court held that access to the courts 'would be a hollow promise' unless such access was meaningful and real." *United Transportation Union* v. *The State Bar of Michigan*, 401 U.S. 576, 91 S.Ct. 1076, 28 L.Ed.2d 339 (1971).

The action of the Oklahoma Supreme Court is to directly deny a full and fair trial by limiting pretrial discovery. This is a giant step backward. It is a step backward that this High Court has already prevented. In the case *Williams* v. *Florida*, 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970), Justice White held:

> "The adversary system of trial is . . . not yet a poker game in which players enjoy an absolute right always to conceal their cards until played. We find ample room in that system, at least as far as due process is concerned, for the instant Florida rule, which is designed to enhance the search for truth . . . *by ensuring both the defendant and the state ample opportunity to investigate certain facts crucial to the determination of guilt or innocence.*" (Emphasis added.)

However, due process and access to court are meaningless phrases (or hollow promises) if a litigant cannot conduct necessary pretrial discovery. In the case at bar, it is vital that Guy Grider obtain a key for access to his oil and gas leases operated by TXO. Guy Grider seeks to view what transpires on wells wherein he owns a substantial share. And the order of Judge Blevins merely returned Guy Grider to the status he previously enjoyed in having a key to the aforesaid leases in the past from the prior operator.

In the unlikely event that Mr. Grider's visits to the leases would ever interfere with the operations of TXO, or in any way become merely vexatious, oppressive or unduly burdensome to the lawful operator, then the operator may apply for a protective order under appropriate provisions of the Oklahoma Discovery Code, to-wit:

> "Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending . . . may enter any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense." 12 O.S. Supp. 1985, §3203C.

Simply put, a "meaningful" trial or hearing must be "fundamentally fair," *Lassiter* v. *Department of Social Services of Durham County, North Carolina*, 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981), *rehearing denied*, 453 U.S. 927, 102 S.Ct. 889, 69 L.Ed.2d 1023 (1981). And basic fairness and integrity of the factfinding process are the "guiding stars" of the constitutional guarantee of due process of law, *Boykins* v. *Fairfield Board of Education*, 492 F.2d 697

(5th Cir. 1974), *cert. denied*, 420 U.S. 962, 95 S.Ct. 1350, 43 L.Ed.2d 438 (1975).

In this litigation, Guy Grider has been denied a simple and fundamental constitutional right. By a 5-3 vote of the Oklahoma Supreme Court, Mr. Grider cannot perform pretrial discovery on his own land. This denial prevents him from presenting at trial all aspects of his case. "Trial" under these circumstances is utterly meaningless. This denial reduces Guy Grider's constitutional right to due process of law to a "hollow promise" that Justice White warned against in 1970 in *Williams* v. *Florida*, supra. Such a blatant denial of constitutional rights cannot stand.

CONCLUSION

For the foregoing reasons and authorities cited therefor, Guy Grider prays that this petition for writ of certiorari should be granted.

Respectfully submitted,

DANIEL J. GAMINO
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3315 N.W. 63rd
Oklahoma City, Oklahoma 73116
(405) 840-3741

Attorney for Petitioner
Guy Grider

May, 1986

CERTIFICATE OF SERVICE

This is to certify that three (3) true and correct copies of this Petition for Writ of Certiorari were served by placing them in the U.S. Mail, with postage fully prepaid, to all parties required to be served, to-wit:

James Gaitis
Attorney at Law
117 Park Avenue
Oklahoma City, OK 73102

Mr. Robert D. Baron
Fellers, Snider, Blankenship, Bailey & Tippens
Attorneys at Law
24th Floor First National Center West
Oklahoma City, OK 73102

This ..... day of May, 1986.

DANIEL J. GAMINO

APPENDIX

[Filed Feb. 5, 1986]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Wednesday, February 5, 1986

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

* * * * * *

64,933 Texas Oil & Gas Corporation and TXO Production Corporation v. The Hon. James B. Blevins, District Judge etc. et al.

Rehearing denied.

CONCUR: Doolin, V.C.J., Hodges, Lavender, Kauger, Summers, JJ.

DISSENT: Hargrave, Opala, Wilson, JJ.

* * * * * *

(s) *Ralph B. Hodges*
ACTING CHIEF JUSTICE

[APPENDIX]

[Filed Sep. 16, 1985]

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

TEXAS OIL & GAS CORP., and TXO PRODUCTION CORP., Petitioners,	)	
vs.	)	No. 64,933
THE HONORABLE JAMES B. BLEVINS, DISTRICT JUDGE FOR THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA and GUY GRIDER, Respondents.	)	

ORDER

Original jurisdiction is assumed. Writ of Prohibition issue prohibiting respondent, James B. Blevins, District Judge, Oklahoma County, or any other assigned judge, from enforcing an Order of Inspection as to the furnishing of a duplicate set of keys to plaintiff in Cause CJ-85-1689, filed in the District Court of Oklahoma County and Styled: "GUY GRIDER v. RATLIFF EXPORATION COMPANY, et al."

The requirement to furnish a duplicate set of keys to the lease gates goes beyond the scope of entry and inspection allowed by 12 O.S. 1981, §3211(A)(2).

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS *16th* DAY OF *September*, 1985.

(s) *Robert Simms*
CHIEF JUSTICE

September 26, 1983

RATLIFF .01

Ratliff Exploration Company
Attn: Ralph Lamb
First Oklahoma Tower
210 West Park Avenue Suite 1950
Oklahoma City, OK 73102

SUBJECT: ACCESSIBILITY OF WORKING INTEREST OWNERS TO OIL AND GAS WELLS

The Ratliff Exploration Company, in the spring of this year, changed the gate locks on oil and gas wells in which I have a working interest, thereby denying me access. This lock change occurred in the same time period in which I was questioning the source, use and destination of oil and gas from and to leases that I had an interest in.

I am not implying or saying that this questioning of mine resulted in a change in Ratliff's policy toward owner accessibility to oil leases. All that I know is my key no longer fits any gate lock.

I am a well known Oklahoma City business man being in the grocery business for 30 years. I have secured a comfortable sum of money for retirement by using prudent business practices. I have lost inventory control, which no successful business man would tolerate, by your action of locking me out of well leases on which I have a working interest. By monitoring these oil and gas leases in the past, I was able to question your monthly billing statement and had one bill reduced from $10,000.00 to $2,000.00 and another reduced from $20,603.00 to $3,295.00.

I am seventy years plus and fear bodily harm if I have to continue climbing over gates that restrict me from monitoring changes in gas pressure, gas production charts on site, quantity of oil stock and observing work in progress for which I will be billed.

[APPENDIX]

I understand the concern of your company toward the safety of the oil lease equipment, company personnel and the working interest owners. I am quite willing to accept full responsibility for any injury on my part. However, I have never tampered with any valves etc. and do not intend to in the future.

I hope you understand that as a business man I intend to insure my investment as best I can. I do want a key/lock to each and every well that I have a working interest. If I have not received a key/lock by October 14, I am assuming that you have no intention of cooperating on this matter. In that event, I will be forced to take legal action.

Sincerely,

(s) *Guy Grider*
Guy Grider

Copies to: Don Estes
Diversified Oil and Gas Exploration
Marvin York, Attorney at Law

Supreme Court, U.S.
FILED
JUN 4 1986
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 85-1827

In The

Supreme Court of the United States

October Term, 1985

GUY GRIDER,

Petitioner,

v.

TEXAS OIL & GAS CORP. and
TXO PRODUCTION CORP.

Repondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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Attorney for Respondents
TEXAS OIL & GAS CORP. and
TXO PRODUCTION CORP.

June, 1986

38 pp

QUESTION PRESENTED

1. Petitioner has cast the question for this Court to decide as follows:

> "Whether denying a litigant the opportunity to visit his own land to conduct pretrial discovery constitutes a denial of that litigant's constitutional right to due process of law?"

As will be shown more fully herein, Respondents vehemently and strenuously deny that the question, as stated, accurately sets forth the true issue before this Court or the outcome of the proceedings below.

Accurately stated, the question Petitioner really seeks this Court to address is: Whether the Oklahoma Supreme Court has violated due process by ruling that discovery procedures to inspect property are not so broad as to grant to a litigant personal keys to an oil/gas production facility jointly owned by various parties who have agreed among themselves that one of the parties shall manage and operate the facility for the joint account and benefit.

PARTIES TO THE ACTION

Pursuant to Supreme Court Rule No. 28.1 Respondents state that they are owned by a parent corporation, U.S. Steel Corporation, and Respondent Texas Oil and Gas Corp. has one subsidiary corporation which is not wholly-owned, TEX-CON Corp.

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GUY GRIDER,

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TEXAS OIL & GAS CORP. and
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Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

JURISDICTION

Petitioner has incorrectly cited the jurisdictional basis for a Writ of Certiorari from a state court decree. The appropriate jurisdictional basis for such an action is 28 U.S.C. Section 1257(3).

STATEMENT OF THE CASE

Respondent has no particular quarrel with the factual points set forth in Petitioner's Introduction and Statement of the Case, except for the following particulars. Some of the wells in question are indeed located in secured areas in and around Will Rogers International Airport. The unfettered access Petitioner seeks to all of the production facilities could indeed pose not only a threat to Petitioner himself, but to all visitors to the Airport property. Security and safety have been the paramount considerations in the approval by airport authorities and the Federal Aviation Administration in permitting oil and gas exploration to take place on the airport properties. The original operator, Ratliff Exploration Company, did not deny Petitioner his own personal keys to such facilities simply because Petitioner questioned certain billing practices of the former operator. The security and safety of all parties has been and is the single factor in this decision.

Petitioner states that the refusal to allow Petitioner his personal key is contrary to the "plain language of the

Operating Agreement...." His statement is again misleading. The pertinent provision of the Agreement between the parties provides only for reasonable access. Petitioner, through his rather petulant request for his own personal keys, desires unfettered and unlimited access to the facilities contrary to the agreement between the parties that Respondent shall operate the properties exclusively. Petitioner further states that the trial judge, Judge Blevins, granted his Motion for Entry Upon Land for Inspection. This is again misleading. The ruling of the trial court, which was subsequently overruled by the Oklahoma Supreme Court, was that the Petitioner could indeed have his own key to every single well jointly owned by the parties.

Petitioner clearly has the right under the Agreement between the parties and under the pertinent provisions of the Oklahoma Statutes[1] to visit the facilities at any time. Further, Respondents have repeatedly advised the Petitioner that he has every right to visit the facilities and observe

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1 12 O.S. 3211(a)(2).

operations, as set forth in those letters from the Respondents to the Petitioner attached in the Appendix hereto. The only request of the Petitioner which the Respondents have refused is that he be allowed unlimited access to the facilities. Neither the Respondents nor the courts of Oklahoma have ever denied the Petitioner the right of inspection and observation.

However, aside from these rather deceiving factual assertions, it is the manner in which Petitioner has cast certain conclusions in his Introduction and Statement to which Respondent takes the most vigorous objection.

It has been demonstrated above that Respondent and the Courts of Oklahoma have consistantly confirmed Petitioner's right to visit the premises and observe operations. However, Petitioner continues to mislead the Court by characterizing the premises as "his own land." First, oil and gas leases, under Oklahoma law, are not real estate in the normal sense of the word, but only an interest in the real estate which entitles the owner to explore for hydro-

carbons.[2] Petitioner would apparently have this Court believe that the Respondents were somehow denying Petitioner his constitutionally protected right to use and enjoy his property. This is simply false.

Next, as admitted by Petitioner, the property in question is jointly owned. As in almost all ventures concerning real estate or in this case interests in real estate the parties have agreed among themselves to appoint an operator or managing partner to exclusively control the parties' joint property. The Petitioner's remedy if he is dissatisfied with the operations of the manager is removal and appointment of a new manager, an issue which does not even remotely rise to constitutional or federal significance.

Because the contractual dispute cannot conceivably rise to constitutional significance, the Petitioner has essentially cast his request for a Writ of Certiorari in the following way:

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2 Cate v. Archon Oil Company, Inc., 695 P2d 1352 (Okl. 1985); Hinds v. Phillips Petroleum Company, 591 P2d 697 (Okl. 1979); Mohoma Oil Company v. Ambassador Oil Corp., 474 P2d 950 (Okl. 1970).

> The denial by the Oklahoma Supreme Court of Petitioner's request for an individual key to every oil production facility denied Petitioner his due process rights, in that the intent and purpose behind normal pretrial discovery and a meaningful trial have been destroyed.

In short, this case is really a dispute over a key, not property rights or even proper access to the courts. The Respondents submit that Petitioner's request for Certiorari is wholly without merit and that this Court should not hesitate to exercise its discretion to deny Petitioner's Writ.

REASONS FOR DENYING THE WRIT

I. Neither the Oklahoma Discovery Code nor Due Process Principles Justify or Require Reversal of the Judgment Below.

Petitioner complains that the Oklahoma Supreme Court's interpretation of certain provisions of the Oklahoma Discovery Code renders pretrial discovery meaningless in his case and, therefore, due process has been violated. Once again, Petitioner misleads the Court.

To repeat, Petitioner has not been denied discovery. Petitioner has only been denied a key. In addition to the

Oklahoma Discovery Code, under the Agreement of the parties, Petitioner may visit, inspect and observe the property in question and operations thereon at any time. Petitioner may, by such inspection and observation, complete any discovery he needs to present a meaningful case at trial. Further, because Petitioner has seen fit to repeatedly emphasize this aspect, it is necessary that Respondent again emphasize that not only is Petitioner incorrect in stating that inspection rights have been denied, but he is clearly incorrect in stating that he has been denied certain rights to "his own land." The properties in question are jointly owned with exclusive management and control of the properties delegated to the Respondents.

The pertinent provision of the Oklahoma Discovery Code in question is as follows:

> **Section 3211. Production of Documents and Things and Entry Upon Land For Inspection and Other Purposes.** A. Any party may serve on any other party a request: . . . 2. To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon, within the scope of

> Subsection B of Section 3 of the Discovery Code . . ."[3]

Petitioner maintains that the above-quoted language clearly indicates that he should be allowed a key to the facilities and the Oklahoma Supreme Court's interpretation to the contrary "chokes off normal and necessary pretrial discovery." Clearly, Petitioner's view of this "plain language" is very imaginative. The Section speaks only of entry and inspection for certain purposes after service on the party in possession of the property of a request for such purposes, not unlimited access without any notice to any party. It should be noted by this Court that this provision of the Oklahoma Discovery Code is virtually identical to the pertinent Federal Rule.[4]

Certainly then, a plain and commonsense reading of the statutory provision complained of would indicate that nothing therein dictates by implication or logic that the Oklahoma Supreme Court was wrong in denying Petitioner's

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[3] 12 O.S. Section 3211(a)(2).

[4] Fed. Rule Civ. Proc. 32(A)(2), 28 U.S.C.A.

request for his own personal set of keys.

The decision below was also formally correct. Petitioner has not cited to this Court or to any inferior court a single case indicating that modern discovery codes should allow or should be interpreted to allow litigants unlimited and unfettered access to facilities which are under the exclusive control and management of their opponents.

The decision below is not only formally correct, but fairly and equitably preserves the rights of all parties. In addition to inspection and observation rights Petitioner has by statute and contract, Petitioner may employ his own field personnel (in oil field parlance referred to as a "pumper") to observe any operations of the Respondents. Petitioner may also employ the services of petroleum engineers, geologists and all other technical personnel who could and should be allowed the right to inspect any and all observations of the Respondents.

Any decision by this Court to reverse the lower court's decision could only mean virtual chaos in the judicial system and in the oil and gas industry in general. Such a decision

would mean that any case involving real estate would mandate that all parties have uncontrolled access to the property of their opponents. In the oil and gas industry, thousands of passive, non-industry investors in oil and gas operations nationwide would then be allowed unlimited access to facilities and operations which are by their nature inherently dangerous. Such a result simply cannot be countenanced.

Petitioner premises his entire case upon a denial of due process through his inability to obtain a set of keys from the Oklahoma courts. Respondents submit that Petitioner seeks to expand the definition of due process to impossible limits. There has been no limitation on pretrial discovery nor any attempt to forestall Petitioner from presenting every available claim. As indicated herein, Petitioner has a vast array of procedures for discovering relevant evidence both through the provisions of the Oklahoma Discovery Code and his own contractual rights. There is no logical connection, nor can there be, between a personal set of keys and Petitioner's ability to access, visit and observe the oil and

gas leases and operations in question. Petitioner's true contention is that inasmuch as he was unsuccessful in the lower courts, his right of due process has therefore necessarily been violated. This is of course untenable.

This Court and others in the Federal system have repeatedly held that due process is not violated, and indeed the judicial process is improved, by having reasonable bounds on what process is really due and necessary:

> "Full and complete discovery should be practiced and allowed, but its processes must be kept within workable bounds on a proper and logical basis for the determination of the relevancy of that which is sought to be discovered."[5]

> "(T)here must be some limitations on discovery. Courts must exercise their discretion to prevent the discovery process from becoming oppressive and unfair. . . ."[6]

---

5 Jones v. Metzger Dairies, Inc., 334 F2d 919 (5th Cir. 1964), cert. denied., 379 U.S. 965, 85 S.Ct. 659, 13 L.Ed.2d 559 (1965).

6 Dresser Industries, Inc. v. Doyle, 40 F.R.D. 478 (N.D. Ill. 1966).

> "(D)ue process of law has never been a term of fixed and invariable content."[7]
>
> "The Fifth Amendment guarantees no particular form of procedure; it protects substantial rights."[8]
>
> "The requirements imposed by that guarantee are not technical, nor is any particular form of procedure necessary."[9]
>
> "A party is not deprived of his property without due process of law when, as regards the issues affecting it, he has by the laws of the state a fair trial in a court of justice according to the applicable modes of proceeding."[10]

As can be seen from the above cases, Petitioner has been denied no constitutional rights. He has been afforded complete access to the courts and all reasonable means to present evidence bearing on his claim at trial. Simply put,

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7 Federal Communication Commission v. W.J.R. The Goodwill Station, 337 U.S. 265, 69 S.Ct. 1097, 93 L.Ed. 1353 (1949).

8 NLRB v. Mackay Radio and Teleg. Co., 304 U.S. 333, 351; 58 S.Ct. 904; 82 L.Ed. 1381, 1393 (1937).

9 Inland Empire District Counsel, Lumber and Saw Mill Workers' Union v. Millis, 325 U.S. 697, 710; 65 S.Ct. 1316; 89 L.Ed. 1877, 1885 (1944).

10 Davidson v. City of New Orleans, 96 U.S. 97, 6 Otto 97, 24 L.Ed. 616 (1877).

Petitioner has failed to demonstrate even a remote connection between his single-minded desire for his personal set of keys and the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

Finally, Petitoner cites several cases which he alleges mandate a reversal of the lower court in order that Petitioner be accorded a "meaningful" trial. All of the cases cited by Petitioner relevant to constitutional issues in a civil context bear only upon the issue of access to the courts through notice and an opportunity to be heard, or access to the courts in general. Petitioner has failed to point out, and indeed cannot point out, in what way any of these cases bear upon the issue of the disputed keys. As pointed out in a case itself cited by the Petitioner:

> "The requirements of due process are sufficiently flexible to accomodate themselves to various persons, interests and tribunals without reduction to a stereotype and hence to absurdity."[11]

---

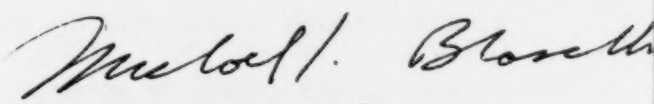
[11] Boykins v. Fairfield Board of Education, 492 F.2d 697, 701 (5th Cir. 1974), cert. denied., 420 U.S. 962, 95 S.Ct. 1350, 43 L.Ed.2d 438 (1975).

Petitioner's request that this Court grant certiorari in order that he may have keys to the facilities in question is, candidly, an "absurdity."

CONCLUSION

For all of the reasons noted above, this Court should exercise its discretion to deny the Petition for Writ of Certiorari.

Respectfully submitted,



MICHAEL J. BLASCHKE
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(405) 236-0478

Attorney for Respondents,
TEXAS OIL & GAS CORP. and
TXO PRODUCTION CORP.

June, 1986

AFFIDAVIT OF SERVICE AND MAILING

STATE OF OKLAHOMA)
) SS
COUNTY OF OKLAHOMA)

Michael J. Blaschke, being first duly sworn deposes and says:

1. That the Brief In Opposition To Petition For Writ Of Certiorari To The Supreme Court Of The State Of Oklahoma to which this Affidavit is attached has been served upon all counsel of record for the parties in this cause in accordance with the provisions of Rule 28 of the Rules of the Supreme Court of the United States by placing three copies of the same in the United States Mail, first class postage prepaid, properly addressed to:

Mr. Daniel J. Gamino
Daniel J. Gamino & Associates, P.C.
3315 N.W. 63rd
Oklahoma City, Oklahoma 73116
Attorney for Petitioner

Mr. Robert D. Baron
Fellers, Snider, Blankenship, Bailey & Tippens
Attorneys at Law
24th Floor, First National Center West
Oklahoma City, Oklahoma 73102

2. That the foregoing represents service on parties required to be served under the provisions of Rule 28 of this Court.

3. That to my own personal knowledge and pursuant to Rule 28.2 of the Rules of this Court, 40 copies of this Brief In Opposition To Petition For Writ Of Certiorari To The Supreme Court Of The State Of

Oklahoma were mailed, first class postage prepaid, properly addressed to the Clerk of the Supreme Court of the United States on the 4 day of June, 1986, which is within the time allowed for filing under the Rules of this Court.

Michael J. Blaschke
MICHAEL J. BLASCHKE

Subscribed and sworn to before me on the 3rd day of June, 1986.

Kathy Knight
NOTARY PUBLIC

My Commission Expires:

NOTARY PUBLIC IN AND FOR STATE OF OKLAHOMA (SEAL)

KATHY KNIGHT
NOTARY PUBLIC, OKLAHOMA COUNTY
My Commission Expires May 7, 1990

APPENDIX

March 21, 1985

Mr. Daniel J. Gamino
Daniel J. Gamino & Associates, P.C.
3315 N.W. 63rd
Oklahoma City, OK 73116

Re: Right to Reasonable Access to Records and Locations; Agreement Pursuant to Temporary Order Hearing of March 12, 1985

Dear Mr. Gamino:

We have agreed to reasonable access to locations and records of TXO Production Corp.. In exchange for this agreement you will withdraw your request for injunctive relief in the action against TXO and Ratliff Exploration Company, et al.

Please be advised that your client is allowed the right to reasonable access to locations and joint accounts in which you have an interest. Attached are letters dated October 7, 1983, and January 8, 1985, in which Ratliff Exploration Company advised Mr. Grider of the same rights to inspection.

If your client would like to inspect a location he may do so at any time during business hours by calling Mr. Ron Schafer of our field office or Mr. Bill Robertson at our downtown office. (Phone numbers 745-3453 and 235-8326 respectfully).

For reasons previously given, we cannot allow your client or any other working interest partner his own key to locations. We have the absolute duty to protect the location

(APPENDIX)

for the benefit of all partners. We trust you understand that to allow keys to one partner could necessitate keys to all, which would render the location unsafe and unsecure.

Regarding the inspection of joint account expenses, please call Mr. Bill Robertson at our downtown office and he will set up an appointment with your client at a mutually agreeable time.

Very truly yours,

TXO PRODUCTION CORP.

(s) Leland J. McVay

Leland J. McVay
Vice President
Eastern Oklahoma District

WRH/LJM/cmp

Attachments

cc: Ralph Lamb
Bill Robertson
Ron Schafer
Ed Logan
Jim Gaitis
Emery, McCandless, Gaitis & Bruehl
117 Park Avenue
Oklahoma City, Oklahoma 73102

(APPENDIX)

October 7, 1983

Mr. Guy Grider
220 S.E. 89th Street
Oklahoma City, OK 73149

Dear Mr. Grider:

This letter is written in response to your letter dated September 28, 1983 regarding your joint interest billings and access to the contract areas where you are a working interest owner.

Mr. John Smith of our Accounting Department has advised us that he will be meeting with you following the processing of the August, 1983 joint interest billings which will be sent out the week of October 3, 1983. Mr. Smith further informs us as to the reductions of your billings referred to in your letter of September 28, 1983, were due to the timing and application of your prepayments and not due to incorrect charges relating to properties which you are a working interest owner.

Regarding your access to contract areas where you are a working interest owner, we have no intentions of keeping you from having access to the properties. As called for in the Model Form Operating Agreement A.A P.L. Form 610-1977, Article VI, Section D, Access to Contract Area and Information:

> Each party shall have access to the Contract Area at all reasonable times, at its sole risk to inspect or observe operations, and shall have access at reasonable times to information pertaining to the development or operation thereof, including Operator's book and records relating

(APPENDIX)

thereto.

We will make available to you at all reasonable times, access to the properties which you are a working interest owner. You may contact Mr. Don Estes or Mr. Ron Shafer of our field office located at 6924 S.W. 59th Street, telephone number 745-3453 to make arrangements to get access to these properties. If you are unable to reach Mr. Estes or Mr. Shafer, you can contact Mr. Bill Robertson at our downtown office at 235-8326, who will arrange for your access to the above said properties.

Mr. Guy Grider
October 7, 1983
Page 2

We understand your interest in your investment and recognize your right to have access to the properties in which you are a working interest owner. We hope you can understand our position whereby we cannot permit every working interest owner in every well to have a key to every lock in which Ratliff Exploration Company is the operator for safety and security reasons.

Your cooperation and understanding in this matter will be greatly appreciated.

Sincerely,

(s) R. C. Lamb, Jr.

R. C. Lamb, Jr.
President

RCL:kd

(APPENDIX)

January 8, 1985

Guy Grider
220 S. E. 89th St.
Oklahoma City, Ok 73149

Re: Your letter dated January 4, 1985

Dear Mr. Grider:

Per our standard operating agreement, all participants have the right to audit the expenses that have been charged to the joint account, therefore, we would be happy to have you or your representative to come to our Duncan office and audit any of the wells that you have participated in. If after reviewing our files you have a specific question concerning a charge by a vendor, it would be our pleasure to direct the vendor to provide you with a written response to your letter.

Please contact me at 235-2916 to set up a specific time to come to our office to perform your audit.

Very truly yours;

RATLIFF EXPLORATION COMPANY

(s) John B. Smith

John B. Smith
Controller

JBS/sp

Supreme Court, U.S.
FILED
JUN 19 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1827

In the Supreme Court of the United States

OCTOBER TERM, 1985

GUY GRIDER,
Petitioner,

vs.

TEXAS OIL & GAS CORP. and
TXO PRODUCTION CORP.,
Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

DANIEL J. GAMINO
Daniel J. Gamino & Associates, P.C.
3315 N.W. 63rd
Oklahoma City, Oklahoma 73116
(405) 840-3741

Attorney for Petitioner
Guy Grider

June, 1986

QUESTION PRESENTED

1. Whether denying a litigant the opportunity to visit his own land to conduct pretrial discovery constitutes a denial of that litigant's constitutional right to due process of law?

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Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

INTRODUCTION

On May 5, 1986, Petitioner Guy Grider filed his Petition for Writ of Certiorari in this Court.

In early June, 1986, the Respondents, Texas Oil & Gas Corp. and TXO Production Corp. filed a timely response. The Brief in Opposition to Petition for Writ of Certiorari filed by Respondents attempts to raise numerous facts and legal arguments for the first time. Many of the so-called "facts" are not in the record below. And the facts are presented in a name-calling fashion obviously calculated to inflame (and confuse) this High Court.

Therefore, pursuant to the legal authority of Rule 22.5, Rules of the Supreme Court of the United States, this Reply Brief is submitted by the Petitioner.

The letters in the Appendix of Respondent's Brief in Opposition are incomplete. Therefore, the Appendix attached to this Reply Brief includes the Grider letter of January 4, 1985, to Ratliff Exploration concerning authorization to review Halliburton invoices.

REPLY TO RESPONDENTS' STATEMENT OF THE CASE

Respondents' Statement of the Case is found at pages 2-6 of its Brief. The statement contains numerous inaccuracies.

First, there is absolutely no evidence in the record to substantiate the Respondents' claim that any of the oil wells in question are located in "secured areas in and around Will Rogers Airport." This statement was argued by the Respondents' attorneys below, but no proof was ever put into the record or even offered on these facts. Nor is there any evidence anywhere in the record that Mr. Grider's occasional presence on the lease posed any threat of any nature to airport security or safety. Obviously, any bona fide safety issue would expose the city airport and the municipal trust that manages it to serious liability. The record below does not reflect any attempt by any city representative or airport trust representative to intervene to protect their exposure. Neither the city nor the trust even attempted to intervene because the so-called "security and safety" issue is specious. It is a smoke screen billowed up by the Respondents to disguise the true nature of the Respondents' unlawful activities.

The so-called "secured area" around the airport is "secured" only by words. The leases are located far away from any runways or towers. The leases contain pasture land with wandering horses and cows, wheat pasture, hunters, skeetshooters and softball fields.

Further, when the Respondents' predecessor operated the leases, Mr. Grider received from the prior operator a master key to gain access to the land to view oil and gas operations conducted thereon. No evidence was ever introduced nor was it even alleged that Mr. Grider's previous occasional presence on the lease ever interfered with the operations or posed any danger to airport flights or led to any sabotage or unexplained losses.

Second, the Petitioner already quoted Art. 6, §D, Access to Control Area and Information, contained in the Model Form Operating Agreement signed by Mr. Grider and all working interest owners. The language of the paragraph speaks for itself — "access" must be "at all reasonable times." Obviously, what is "reasonable" depends on the specific facts of any particular case. When crude oil is being trucked 24 hours a day at a value of $10,0000.00 per truckload, an occasional visit by a working interest owner is reasonable.

In the case at bar, Mr. Grider alleges that the operator is engaged in unlawful activities by improper billing and by not giving credit for all hydrocarbons produced and sold. It is therefore totally unreasonable to require Mr. Grider to telephone the operator of the wells in advance in order to visit a lease at a subsequent time and date. Obviously, the operator is alerted to avoid any unlawful

activity in the presence of Mr. Grider. Just as obviously, a police raid would never succeed if the criminals were tipped off in advance as to the date and time of the future police action. For this precise reason, the District Court of Oklahoma County granted Mr. Grider's Motion for Entry Upon Land for Inspection.

Third, Mr. Grider may lawfully refer to the leases in question as "his own land." It is undisputed that Mr. Grider owns an undivided interest in the leases. His interest includes rights to use the land for drilling, setting up tanks, grading roads, etc. It is further undisputed that Mr. Grider paid over $1,000,000.00 for his share of ownership and for his subsequent proportionate share of drilling and production costs. Mr. Grider has an absolute right to enjoy and visit his property at his own expense and risk as sought herein.

Fourth, Mr. Grider's legal remedies are not limited. He may sue on his contract to protect rights which he previously exercised and rights which are granted in the contract itself. If any of Mr. Grider's constitutional rights are vioated he may seek redress from this High Court. Therefore, Mr. Grider filed this Petition seeking to enforce his constitutional right to protect his property by lawful pretrial discovery and to prevent deprivation of his property without due process of law.

REPLY TO RESPONDENTS' REASONS FOR DENYING THE WRIT

In their Brief, the Respondents try to denigrate this case to Mr. Grider merely being denied a key.

But the case does not stop there.

The key in question is tied to bedrock constitutional issues that cannot be ignored. The key in question is Mr. Grider's key to his own property. Mr. Grider wants to use the key to gain access to his property in order to gain evidence for a lawsuit on file. And any trial of that lawsuit is meaningless when a party cannot discover and present all relevant evidence. And this Court has correctly stated many times that a "meaningless" trial violates every tenet of procedural due process of law. *Fuentes* v. *Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972), *rehearing denied* 409 U.S. 902, 93 S.Ct. 177, 34 L.Ed.2d 165 (1972); *Armstrong* v. *Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965); *Boddie* v. *Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971); *Landsey* v. *Normet*, 405 U.S. 56, 92 S.Ct. 862, 31 L.Ed.2d 366 (1972), and *Holt* v. *Commonwealth of Virginia*, 381 U.S. 131, 85 S.Ct. 1375, 14 L.Ed.2d 270 (1965). Any "meaningless" trial or hearing renders the bedrock constitutional guarantee of due process of law into a "hollow promise", *United Transportation Union* v. *The State Bar of Michigan*, 401 U.S. 576, 91 S.Ct. 1076, 28 L.Ed.2d 339 (1971).

The *key* to Mr. Grider's problem is the Respondent's breach of contract. Respondent is deliberately obscuring the issue of the Petitioner's property rights to oil and gas produced. Each molecule of hydrocarbon the Respondent

produces is accountable to not only the Petitioner, but to other working interest owners, royalty owners, the State of Oklahoma (gross production tax) and the United States of America (windfall profit tax).

The Petitioner herein, Mr. Grider, is not served by hiring a "pumper" or other technical experts to visit the lease. This claim by the Respondents is ridiculous. These professionals cannot perform their services standing on a public road looking over the fence to a distant oil well. These experts must also have access to the property. And obviously these representatives cannot gain access to the property without the same advance warning to the Respondents. And just as advance warning would render any visit by Mr. Grider meaningless, advance warning would also render meaningless any visit by a pumper or any other expert.

Finally, the Respondents argue (predictably) that Petitioner's request from this Court would "mean virtual chaos" in the judicial system and in the oil and gas industry in general. Such a notion is ludicrous.

Mr. Grider herein merely seeks occasional access to his own lease, at his own risk and expense, to view what transpires. It is the same practice he and other working interest owners previously enjoyed on this lease. Such access is authorized in the Operating Agreement. It is specifically provided in the Oklahoma Discovery Code, 12 O.S. Supp. 1985, §3211. If there was ever any evidence these occasional visits caused some public danger or damage (instead of the operator's present speculation) then the op-

erator could seek an appropriate protective order, 12 O.S. Supp. 1985, §3203C. With the unique facts of this case, where there are allegations that the well operator engaged in fraudulent billing practices and underpayment for proceeds of hydrocarbons, such access by the Petitioner is crucial. Evidence of these actions by the operator will not be available if Mr. Grider must telephone in advance and thereby warn the operator of the date and time of his subsequent visit. Obviously, by the time of Mr. Grider's belated and well-advertised arrival, all evidence would disappear.

Further, Petitioner wonders if the "chaos" the Respondent is really concerned about is that which would occur when the "passive, non-industry investors in oil and gas operations nationwide" seek the truth about operation of their leases? Certainly seeking honest answers does not threaten chaos.

Any attempt at pretrial discovery by the Petitioner under these limitations is useless. And any trial that occurs after pretrial discovery is totally hamstrung is utterly meaningless.

It is to address the decision of the Oklahoma Supreme Court that deprived Mr. Grider of his ability to protect his property by lawful pretrial discovery and that deprived him of his property without due process of law, that this Petition for Writ of Certiorari is submitted.

With the Respondent in breach of contract, to deny simple pretrial discovery rights to the Petitioner and to allow the Respondent to continue unabated his unlawful conduct is candidly an absurdity.

CONCLUSION

For the foregoing reasons and authorities cited therefor, Guy Grider prays that his Petition for Writ of Certiorari should be granted.

Respectfully submitted,

DANIEL J. GAMINO
Daniel J. Gamino & Associates, P.C.
3315 N.W. 63rd
Oklahoma City, Oklahoma 73116
(405) 840-3741

Attorney for Petitioner
Guy Grider

June, 1986

CERTIFICATE OF SERVICE

This is to certify that on this ____ day of June, 1986, pursuant to Rule 28 of the Rules of the Supreme Court, three (3) true and correct copies of this Reply Brief in Support of Petition for a Writ of Certiorari to the Supreme Court of Oklahoma, were served on parties required to be served under the provisions of Rule 28 by placing them in the U.S. Mail, with postage fully prepaid, as follows:

Michael J. Blaschke
Mahaffey & Gore, P.C.
Attorneys at Law
420 West Main, Suite 400
Oklahoma City, OK 73102

Mr. Robert D. Baron
Fellers, Snider, Blankenship, Bailey & Tippens
Attorneys at Law
24th Floor First National Center West
Oklahoma City, OK 73102

DANIEL J. GAMINO

APPENDIX

RATLIFF .0031

January 4, 1985

Ratliff Exploration Company
Attn: Ralph Lamb
First Oklahoma Tower
210 West Park Avenue, Suite 1950
Oklahoma City, OK 73102

SUBJECT: REQUEST FOR AUTHORIZATION TO REVIEW HALLIBURTON INVOICES

As a result of recent audits of well completion charges, it has become quite evident and necessary to review actual billing statement/invoices to verify these records for accuracy of costs. It is requested that your company permit Guy Grider Enterprises to review all invoices relating to charges incurred in the drilling and completion of wells on the Airport Trust and the Wheatland Prospect. Any discrepancies found will be provided you and to the working interest owner group [participating non-operators].

This authorization should be in writing with a copy going to Halliburton Service Division, Attn: General Credit Manager, Duncan, Oklahoma and to the Oklahoma City office.

Attachment 1 contains the listing of the wells in question. If your company cannot or chooses not to permit this review, notify us in writing. In either case, we would prefer your answer back by registered mail no later than January 10, 1985.

Sincerely,

Guy Grider